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Serial Number: 09/884,674   Dkt: 884.441US1 (INTEL)
Filing Date: June 19, 2001
Title: SYSTEM AND METHOD FOR AUTOMATIC AND ADAPTIVE USE OF ACTIVE NETWORK PERFORMANCE MEASUREMENT
      TECHNIQUES TO FIND THE FASTEST SOURCE
Assignee: Intel Corporation

REMARKS

This responds to the Office Action mailed on December 14, 2004.

Claims 1, 6, 7, 8, 12, 15, 18, 20, 21, 24, 25, 28 and 29 are amended, claim 2 is canceled,

and; as a result, claims 1 and 3-30 are now pending in this application.

§112 Rejection of the Claims

Claims 6, 7, 15-17, 20, 24 and 29 were rejected under 35 USC § 112, second paragraph,

as being indefinite for failing to particularly point out and distinctly claim the subject matter

which Applicants regards as the invention.

Claim 6-7, as amended, are believed to overcome this 35 USC 112, second paragraph

rejection.

Latency may be a direct measure of time between various events. Speed may be a

distance or a number of bits per unit of time (e.g. Miles per hour, kilobits per second, etc,).

Accordingly, claims 15, 16-17, 20, 24, as amended, are believed to overcome this rejection.

Claim 29, as amended, is believed to overcome the 35 USC 112, second paragraph

rejection.

As a result, it is believed that the 35 USC 112 rejection of the claims is believed to be

overcome. The removal of this rejection is respectfully requested.

§102 Rejection of the Claims

Claims 1, 5, 6, 8, 10, 12, 14, 18 and 25-29 were rejected under 35 USC § 102(e) as being

anticipated by Emens et al. (U.S. 6,606,643).

Base claims 1, 8, 12, 18, 21, 25 and 28 have been amended to include the limitation

consistent with claim 2. Claim 2 includes the limitation of " obtaining an empirical measurement

of a throughput speed of each of the plurality of sources from at least one third-party source".

Emens' method selects the mirror server that has the best response time for a given client

computer requesting web content under changing load conditions. Emens does not teach,

disclose or motivate obtaining information from third-party sources. Emens does not mention a

third party use in determining any performance of mirror servers. Further, Emens does not

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disclose or teach or motivate the Applicants' claimed step of "selecting a source ... based on the empirical measurement from at least one third-party source". See col. 3, lines 26 through col. 4, line 3 and col. 4, lines 26 through 61. As a result, the Applicants believe that base claims 1, 8, 12, 18, 25 and 28, as amended, overcome the 35 USC 102 rejection of the Office Action.

The Applicants believe that claims 5, 6, 14, 26, 27 and 29 are allowable over the art of record by virtue of their dependence on an allowable base claim.

§103 Rejection of the Claims

Claims 2, 3, 7, 11, 13, 15, 16, 19 and 20 were rejected under 35 USC § 103(a) as being unpatentable over Emens et al. in view of "Official Notice."

The Office Action takes official notice of "obtaining empirical measurement of a throughput speed from different sources". Since as the Office Action alleges obtaining data from different sources is known and accepted in the art. Further the Office Action alleges that it would have been obvious to one of ordinary skill to obtain data from different sources as a matter of design choice.

First, the Office Action takes official notice of "obtaining data from different sources". Applicants respectfully traverse this official notice and requests the Examiner to provide a reference that describes such an element. Absent a reference, it appears that the Examiner is using personal knowledge, so the Examiner is respectfully requested to submit an affidavit as required by 37 C.F.R. § 1.104(d)(2).

Second, the Applicants claim in the base claims, as amended, determining empirical measurements from a plurality of sources. The base claims further indicate not only obtaining data from a plurality of sources, as alleged by the official notice, but "obtaining empirical measurement ... of the plurality of sources by at least one third-party source". The requisite motivation to obtain performance information from a plurality of sources and at least one third-party source is found lacking, since nowhere in the art is it suggested or motivated to perform data gathering twice. The Applicants' base claims, as amended, are the only source which motivates the gathering of performance data twice in order to find more accurate estimates of the fastest throughput speed. See the Applicants' specification page 15, line 10 through page 16,

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line 14. The Office Action may not use the Applicants' claims as a road map to put together the art in such a manner to reject the Applicants' claims.

Accordingly, it is believed that base claims 1, 8, 12, 18, 21, 25 and 28 are allowable for the reasons given above. Dependent claims 3, 7, 11, 13, 16, 19 and 20 are further believed allowable for the reasons given above. Other dependent claims are believed allowable by virtue of their dependence on an allowable base claim.

With regard to claim 15, the Applicants claim "storing a transmission time ... ". Column 5, lines 42-45 of Emens mentions only starting a timer and not storing a time. Storing is not mentioned in Emens. Emens does not disclose or suggest storing the time of transmission.

Further, the Applicants claims "initiating a transmission to a download source ...". Emens at col. 3, lines 45-51 sends requests from a central host server to mirror servers. This does not constitute initiating a download. See the Applicants' specification at page 1, line 30 through page 2, line 9. All servers are an equal functional level. Downloads are transmissions from a server to a user level target. Accordingly Emens does not disclose or suggest the initiating a download.

In addition, Emens does not disclose or suggest the Applicants' claimed "storing the receipt time...". Emens at col. 5 lines 42-45 mentions nothing of storing anything, but only mentions stopping a timer. Emens does not disclose or suggest storing the receipt time of the response.

As a result, it is believed that claim 15 is allowable over the art of record. The Applicants respectfully request removal of this rejection.

Claims 4 and 9 were also rejected under 35 USC § 103(a) as being unpatentable over Emens et al. in view of Young (U.S. 6,477,522).

Claims 4 and 9 are believed allowable by virtue of their dependence on allowable base claims 1 and 8, respectively.

Claims 21-23 and 30 were also rejected under 35 USC § 103(a) as being unpatentable over Emens et al. in view of Andrews et al. (U.S. 2002/0038360).

Claim 21 has been amended to be consistent with claim 1. For the reasons given above for claim 1, claim 21 is believed allowable over the art of record.

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Also, it is believed that Andrews does not disclose or suggest "socket connections" since there is no mention of socket connections in Andrews. So, even if Andrews and Emens are combined, as suggested by the Office Action, the Applicants' claimed invention does not result. So claim 21 is believed allowable over Emens and Andrews, even if combined.

Dependent claims 22, 23, and 30 are believed allowable by virtue of their dependence upon allowable base claims 21 and 28, respectively. Removal of this rejection is respectfully requested by the Applicants.

Claim 17 was also rejected under 35 USC § 103(a) as being unpatentable over Emens et al. in view of "Official Notice" and further in view of Andrews et al.

Claim 17 is believed allowable by virtue of its dependence upon allowable base claim 15 as indicated above. Removal of this rejection is respectfully requested by the Applicants.

Claim 24 was also rejected under 35 USC § 103(a) as being unpatentable over Emens et al. in view of Andrews et al. and further in view of "Official Notice."

Claim 24 is believed allowable by virtue of its dependence upon allowable base claim 21 as indicated above. Further as mentioned above Emens does not disclose or suggest the storing as claimed by the Applicants. Therefore, removal of this rejection is respectfully requested by the Applicants.

The Applicants note the art cited by the Office Action, but not applied.

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Conclusion

Applicants respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephones Applicants' attorney, Frank Bogacz, at 480-361-7740, or Applicants' below-named representative to facilitate the prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

JIM CHU ET AL.

By their Representatives,

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Date ~~Feb. 14, 2005~~   By _____
                                   Ann M. McCrackin
                                   Reg. No. 42,858

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this ___ day of _____ 2005.

_____   _____
Name   Signature